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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/710,640	07/18/96	LEVINE	M LVN-08202/03

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B3M1/0602

EXAMINER

FLYNN, N

ART UNIT
2602PAPER NUMBER
3

DATE MAILED:

06/02/97

*Amendment out 8-2-97
due 9-2-97
MAX 12-2-97*

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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JUN 05 1997
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GIFFORD, KRASS, GROH, SPRINKLE,
PATMORE, ANDERSON & CITKOWSKI, P.C.

Office Action Summary

Application No.
08/710,645

Applicant(s)

LEVINE

Examiner

Nathan J. Flynn

Group Art Unit
2602

- Responsive to communication(s) filed on _____
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- Claim(s) 1-22 is/are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- Claim(s) _____ is/are allowed.
- Claim(s) 1-22 is/are rejected.
- Claim(s) _____ is/are objected to.
- Claims _____ are subject to restriction or election requirement.

Application Papers

Sub

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The drawing(s) filed on _____ is/are objected to by the Examiner.
- The proposed drawing correction, filed on _____ is approved disapproved.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All Some* None of the CERTIFIED copies of the priority documents have been
- received.
- received in Application No. (Series Code/Serial Number) _____
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- *Certified copies not received: _____
- Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- Notice of References Cited, PTO-892
- Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- Interview Summary, PTO-413
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Notice of Informal Patent Application, PTO-152

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--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Serial Number: 08/710,645

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1. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.
2. This application is objected to under 35 U.S.C. 251 as lacking the written consent of all assignees owning an undivided interest in the patent. The consent of the assignee must be in compliance with 37 CFR 3.73(b). See MPEP § 324.
3. The reissue oath or declaration filed with this application is defective because it fails to describe the actual error(s) in the patent, i.e., it fails to particularly specify the "defects" in the specification or drawings, 37 CFR 1.175 (a)(2); and/or it fails to distinctly specify the "excess or insufficiency" in the claims, 37 CFR 1.175(a)(3).

In addition, the reissue oath or declaration filed with this application is defective because it fails to particularly specify the errors and/or how the errors relied upon arose or occurred as required under 37 CFR 1.175(a)(5). Included are inadvertent errors in conduct, i.e., actions taken by the applicant, the attorney or others, before the original patent issued, which are alleged to be the cause of the actual errors in the patent. This includes how and when the errors in conduct arose or occurred, as well as how and when these errors were discovered. Applicant's attention is directed to *Hewlett-Packard v. Bausch & Lomb*, 11 USPQ2d 1750, 1758 (Fed. Cir. 1989).

Applicant has failed to specify particularly what "error" is relied upon for filing this reissue. In addition, Applicant has failed to point out how and when this alleged "error" arose or occurred during the prosecution of the original patent application.

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Applicant has failed to point out what error in conduct by himself or by his representative led to the claims being partially invalid.

Applicant states "Recently, I was provided a copy of U.K. Patent Application GB 2 262 374 A, a copy of which is attached herewith, which appears to disclose certain of the subject matter previously claimed in my '282 patent." Applicant is required to specifically point out who and when the alleged errors where discovered. Simply stating that they where "recently" discovered does not meet this requirement.

Applicant has failed to point out what errors occurred during the prosecution of the original application which caused the need for new claims 16-22. Simply because the U.K. patent application did not consider a remotely controllable television receiver doesn't mean that was an error correctable by reissue. In addition, Applicant is required to compare the new claims with the original claims which are nearest in scope.

4. Claims 1-22 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

5. Claims 18, 19 and 20 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 18-20 are vague and ambiguous because the phrase "the associated unit" lacks clear antecedent basis.

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6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kim et al. (USPN 5,448,370) is the U.S. equivalent to GB 2 262 374 A.

7.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan J. Flynn whose telephone number is (703) 308-6601. The examiner can normally be reached on Tuesday to Friday from 7 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John K. Peng, can be reached on (703) 305-4702. The fax phone number for this Group is (703) 305-3988.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-4702.

Nathan J. Flynn
Patent Examiner
May 25, 1997

GLENTON B. BURGESS
PATENT EXAMINER
GROUP 2600